

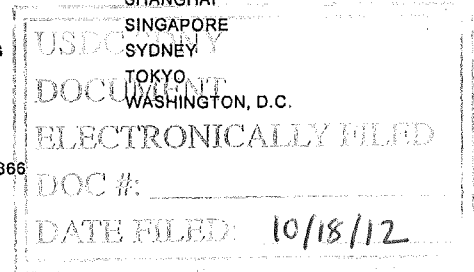
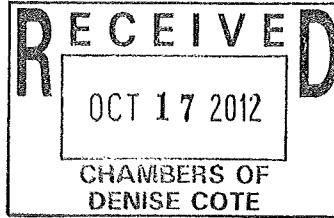


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October 17, 2012

**BY ELECTRONIC MAIL**

The Honorable Denise L. Cote  
United States District Judge  
Daniel Patrick Moynihan United States Courthouse  
500 Pearl Street, Room 1610  
New York, New York 10007-1312

624  
10/18/12

Re: United States v. Apple, Inc., et al., 11-CV-022826 (DLC) (ECF), et al.  
file in 12-cv-2826

Dear Judge Cote: also file in 11-md-2293

I write on behalf of defendants Holtzbrinck Publishers, LLC d/b/a Macmillan ("Macmillan") and Verlagsgruppe Georg von Holtzbrinck GmbH ("VGvH") in response to the letters submitted on October 15, 2012 by the Department of Justice and the Plaintiff States. At a conference with all parties on October 9, 2012, Your Honor directed the Department of Justice and the Plaintiff States to provide the Court and Defendants with a clear statement as to whether they plan to challenge the bona fides of the agency distribution contracts between the Publisher Defendants and Apple for the distribution of each Publisher Defendant's trade eBooks in the United States.

We understand that the Class Action Plaintiffs and the Plaintiff States have clearly disavowed any intention to make such a challenge and admit for the purposes of this litigation that the contracts between the Publisher Defendants and Apple are genuine agency distribution agreements. The Department of Justice, however, submitted a letter which appears to say the same thing, but with some equivocation.



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Macmillan and VGvH understand the Department of Justice's letter to state that the Department of Justice will not challenge the genuineness of the agency agreements between the Publisher Defendants and Apple, and that those contracts may only be unlawful if formed through collusion. To the extent that this understanding is correct, and in express reliance on this understanding being correct, Macmillan and VGvH waive any defense based on the standing of eBooks consumers as indirect purchasers based on the Supreme Court's holding in *Illinois Brick v. Illinois*, 431 U.S. 720 (1977).

Very truly yours,

A handwritten signature in black ink, appearing to read "Joel M. Mitnick", with a stylized flourish at the end.

Joel M. Mitnick

cc: All counsel of record